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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CIVIL

**CITATION** : YAP -v- MATIC [No 3] [2022] WASC 370

**CORAM** : SOLOMON J

**HEARD** : 12 APRIL & 27 OCTOBER 2022

**DELIVERED** : 27 OCTOBER 2022

**PUBLISHED** : 1 NOVEMBER 2022

**FILE NO/S** : CIV 1106 of 2022

**BETWEEN** : VIVIEN JIT SIEN YAP  
First Plaintiff

EMPIRE SONS (AUSTRALIA) PTY LTD T/AS RAY  
WHITE (DALKEITH CLAREMONT)  
Second Plaintiff

AND

SANDI MATIC  
Defendant

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*Catchwords:*

Contempt of court – Breach of court orders – Whether conduct amounted to a breach – Turns on own facts

*Legislation:*

Nil

*Result:*

Defendant guilty of contempt

*Category:* B

**Representation:**

*Counsel:*

First Plaintiff : Mr M L Bennett  
Second Plaintiff : Mr M L Bennett  
Defendant : No appearance

*Solicitors:*

First Plaintiff : Bennett  
Second Plaintiff : Bennett  
Defendant : No appearance

**Case(s) referred to in decision(s):**

Yap & Anor v Matic [2022] WASC 181

**SOLOMON J:**

(This judgment was delivered extemporaneously on 27 October 2022 and has been edited from the transcript)

1        This is an application brought by the first plaintiff in respect of an allegation of contempt by reason of the defendant, Sandi Matic's, alleged breach of the orders of the court.

2        The application for contempt was initially made by chamber summons on 22 March 2022. On 12 April 2022, I heard the application for contempt and I published reasons on 23 May 2022 (the May Reasons).<sup>1</sup> These reasons should be read and understood together with that decision.

3        The relevant orders said to be breached are those made by the court on 11 February 2022. They are set out at [15] of the May Reasons, and in particular, order 1(iv) of those orders, which provided that:

The defendant is restrained and an injunction is granted restraining the defendant, until further order of the court, from threatening the first plaintiff.

4        In the May Reasons, I set out my consideration of the first plaintiff's application for contempt by the defendant, Sandi Matic. As is explained, the first plaintiff's chamber summons identified three instances of alleged contempt. However, by reason of a deficiency in the chamber summons, I could not find in favour of the first plaintiff. Additionally, I was not prepared to entertain an application for leave to amend the application in respect of the first and third instances of alleged contempt, but I did leave open the possibility of a further consideration of the application in respect of the second instance.

5        The second instance concerns an email sent by Mr Matic to the first plaintiff's solicitors, Bennett + Co (as they then were) on 16 March 2022. The relevant content of that email, to which I shall return, is set out at [164] of the reasons of the May Reasons.

6        After publication of the May Reasons, the first plaintiff applied to amend the application to cure the deficiency in the summons. There were various directions hearings relating, at least in part, to that application. The outcome of those hearings was that the first plaintiff

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<sup>1</sup> *Yap & Anor v Matic* [2022] WASC 181.

was given leave to amend the application to cure that deficiency, and orders were made that the application for contempt would be heard on the basis of the amended application.

7           The amended application was filed and served on 5 August 2022, and that is the application presently before me.

8           It is not necessary to provide all the detail in respect of communication with the defendant, Sandi Matic. It suffices, for present purposes, to record that Sandi Matic was given repeated and ample opportunity to respond to the application and was also advised more than once of this listing. It is plain that he was aware of today's hearing, because he responded on two occasions to the notification of the listing of today's application. In those circumstances, although the defendant has failed to appear, I am satisfied that he was aware of the hearing and that the application should proceed in his absence.

9           As explained in the May Reasons, the authorities establish that the elements of contempt to be satisfied beyond reasonable doubt are:

- (a)     there must have been an order of the court;
- (b)     the terms of the court's order must be clear, unambiguous and capable of compliance;
- (c)     the order must have been served on the defendant;
- (d)     the defendant must have had knowledge of the order;
- (e)     the defendant must have breached the order; and
- (f)     the act constituting the breach must have been deliberate and voluntary. This does not require a conscious intention to break the law. Deliberate means the conduct was not casual, accidental, or unintentional.

10          In this application, the real question is whether the first plaintiff has established beyond reasonable doubt that the alleged conduct took place, and whether that conduct constituted a threat to Ms Yap, and therefore a breach of the order. As explained in my judgment of 23 May 2022, the other elements are, plainly, satisfied beyond reasonable doubt.

11          I turn now to the question of whether the conduct took place, and whether it amounted to a threat to Ms Yap. In that context, I return to

the content of the email of 16 March 2022. The relevant part of that email reads as follows:

For one final time, I would request that your client stops telling lies about me if they don't want me telling the truth about them.

I urge you to assess the matters at hand impartially & advise your client that it is in their best interests to get this ridiculous matter dropped before I start issuing subpoenas for production of documents & access to email correspondence and submitting freedom of information requests to The Australian Health Practitioner Regulation Agency (AHPRA) to demonstrate to the courts that this sort of illegal & criminal behaviour started long before Ms Yap and I crossed paths.

Along with sworn affidavits from ex employee's (sic) detailing ongoing unethical & illegal practices, misleading & lying to clients I don't see how even a highly respected & accomplished lawyer like yourself could possibly get the judge to look the other way and ignore the mounting evidence showing a lifetime of corruption.

I am prepared to risk it all & lose everything I've got to see this through to the end even if it means that it will all be to me (sic) detriment.

12        Mr Matic has been given ample opportunity to explain why those words should not be construed as a threat. At [165] of the May Reasons, I set out Mr Matic's response to why, in his view, those matters did not amount to a threat.

13        Mr Matic was also, by reason of my orders dated 11 August 2022, given a further opportunity to put material before the court in relation to the contempt application. No such material was filed.

14        It is plain that Ms Yap did regard that email and its contents as threatening. In her second affidavit of 25 March 2022, Ms Yap gave sworn evidence about the very significant impact of the email on her life, her health, and her anxiety.

15        The question arises as to whether it is sufficient to show that a defendant subjectively perceived a communication to be a threat, or whether it is necessary for the court, objectively, to assess the conduct as a threat. That is not a question that I need to resolve on this occasion, because in my view it is plain that the email of 16 March 2022 on any version, and objectively speaking, constituted a threat. It appeared to be advanced by the defendant in an effort to intimidate Ms Yap to drop the proceedings, lest she encounter unpleasant consequences that are, in a very thinly veiled manner, referred to in that

email. The defendant makes references to illegal and criminal behaviour without foundation, including 'illegal practices', 'lying' and 'a lifetime of corruption', and he makes explicit threats to expose all that. In particular, in the final paragraph, Sandi Matic says that he is prepared to risk it all and lose everything, even if it is to his detriment. In the context of this dispute and on any ordinary sensible construction, this is a very menacing threat to any ordinary person. The explanations provided by Sandi Matic and set out in the May Reasons are unpersuasive, and I reject them.

16 In the circumstances, therefore, I am persuaded beyond reasonable doubt that Sandi Matic breached the order made by the court on 11 February 2022. In that respect, I am satisfied that the defendant, Sandi Matic, is guilty of contempt.

17 Counsel for the first plaintiff has informed me that his office has received, and I am aware that the court has received, various correspondence from the defendant indicating that Sandi Matic continues to reject, at least in some respects, the authority of the court to regulate his conduct. Counsel for the first plaintiff has also drawn my attention to a number of authorities which establish the applicable principles in respect of the appropriate penalty that the court is empowered to impose in the circumstances. Those matters are relevant to the question of the appropriate sanction.

18 Given that Sandi Matic did not appear today, I do not consider it appropriate for the matter of penalty to be determined without giving him one further opportunity to appear and to make submissions as to the sanction to be imposed.

### **Orders**

19 I thereby make the following orders.

1. The defendant, Sandi Matic, is guilty of contempt by reason of his breach of the court's orders dated 11 February 2022.
2. The penalty to be imposed shall be determined at a further hearing to be fixed by the court.
3. Costs be reserved.

*SOLOMON J*

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

IS

Associate to the Honourable Justice Solomon

1 NOVEMBER 2022